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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY,
Plaintiff,

v.

**CHARLTON H. BONHAM, in his official
capacity as Director of the California
Department of Fish and Wildlife,**
Defendant,

and

**PACIFIC COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS and INSTITUTE
FOR FISHERIES RESOURCES,**

Intervenor-Defendants.

Case No. 3:17-cv-05685-MMC

**SIXTH POST-STAY JOINT STATUS
REPORT**

Judge: Hon. Maxine Chesney
Trial Date: None scheduled
Action Filed: October 3, 2017

1 Plaintiff Center for Biological Diversity (Plaintiff or Center), Defendant Charlton H.
2 Bonham, in his official capacity as Director for the California Department of Fish and Wildlife
3 (Defendant or Director), and Intervenor-Defendants Pacific Coast Federation of Fishermen's
4 Associations (PCFFA) and the Institute for Fisheries Resources (IFR) (collectively, the "Parties")
5 respectfully submit this *sixth* post-stay joint status report.

6 The first four post-stay joint status reports were submitted pursuant to the Court's March 26,
7 2019 Order (Dkt. No. 72). This sixth post-stay joint status report is submitted pursuant to the
8 Court's November 16, 2020 Order (Dkt. No. 80), which extended the original stay established by
9 the March 26, 2019 Order (Dkt. No. 72).

10 BACKGROUND

11 Plaintiff filed a complaint on October 3, 2017, alleging that Defendant has caused and is
12 causing the "illegal 'take' of threatened and endangered humpback whales, endangered blue
13 whales, and endangered Pacific leatherback sea turtles." (Dkt. No. 1.) Plaintiff's complaint
14 challenged Defendant's "authorization, permitting, licensing, overseeing, and management of the
15 California commercial Dungeness crab fishery," which Plaintiff alleged "is killing, injuring,
16 harming, capturing, and otherwise causing 'take' of humpback whales, blue whales, and
17 leatherback sea turtles in violation of" Section 9 of the Endangered Species Act. *Id.*; 16 U.S.C. §
18 1538.

19 Defendant filed an answer to Plaintiff's complaint on November 17, 2017, admitting and
20 denying certain of Plaintiff's allegations. (Dkt. No. 15.) After successfully intervening,
21 Intervenor-Defendants filed an answer to Plaintiff's complaint on April 16, 2018, incorporating
22 Defendant's responses in its answer, and admitting and denying certain of Plaintiff's allegations.
23 (Dkt. No. 41.)

24 The Parties filed cross-motions for summary judgment in this case and appeared for oral
25 argument on the motions on February 22, 2019. After the matter was deemed submitted,
26 Defendant requested that the Court hold off on a ruling pending further settlement
27 discussions. Those further settlement discussions were fruitful. The Parties submitted a
28

1 Stipulation and Order Staying the Case, which this Court signed on March 26, 2019. (Dkt. No.
2 72.)

3 The parties later stipulated to extend the original stay, and that original stay was extended
4 through this Court's Order of November 16, 2020. (Dkt. 80.) The November 16, 2020 Order
5 Staying the Case required that the Parties to submit a joint status report every six months as the
6 Parties work through their settlement commitments.

7 **CURRENT STATUS**

8 Since the stay was implemented, the California Department of Fish and Wildlife (CDFW)
9 has made substantial progress toward its settlement obligations and has outlined those significant
10 steps in the previous post-stay joint status reports.

11 Since the last joint status report, CDFW has undertaken the steps outlined below. Citations
12 below refer to Exhibit A of this Court's November 16, 2020 Order (Dkt. No. 80) so that the Court
13 and all Parties can correlate CDFW's actions with progress toward its settlement commitments.

14 Of importance, the update presented below is not cumulative. The update presented below
15 covers activities undertaken or reported by CDFW since the last update (Dkt. 81).

16 **I. Risk Assessment Steps Undertaken Between May and November of 2021**

17 **A. Exhibit A, Section I(c)(i)**

18 CDFW performed risk assessments periodically. To inform each risk assessment, CDFW
19 compiled and distributed data gathered from NOAA, CDFW landings, whale-watch cruises,
20 fishing fleet vessel surveys, independent researchers, NMFS scientific surveys, and fishery whale
21 experts. In coordination with the Working Group, CDFW performed entanglement risk
22 assessments on the days listed below, and expects to conduct an additional risk assessment on or
23 before November 22, 2021:

- 24 ○ May 18, 2021;
- 25 ○ November 1, 2021. This November 1, 2021 risk assessment included restrictions
26 on recreational fishing activity under newly effective regulations promulgated by
27

1 the Fish and Game Commission, delegating authority to the Director to restrict the
2 use of crab traps in response to an entanglement risk.

3 The entanglement risk assessments were supported by CDFW's aerial surveys conducted on
4 the following days:

- 5 ○ October 18, 2021;
- 6 ○ October 19, 2021.

7 The Dungeness crab fishing season closed early statewide on June 1, 2021, after which staff
8 provided the Director fishery updates on June 2, June 16, and July 2 detailing enforcement of
9 closure, results of an aerial survey on June 8, 2021, any information on whale presence, progress
10 on the trap gear retrieval program, entanglement, and any other relevant information. During this
11 time, CDFW took management action to reduce entanglement risk through the following actions:

- 12 ○ June 1, 2021: Dungeness crab fishing season closed early statewide;
- 13 ○ November 1, 2021: delayed the opening of the commercial Dungeness crab fishery
14 in Fishing Zones 3 and 4 (central CA, Sonoma/Mendocino county line south to
15 Lopez Point);
- 16 ○ November 1, 2021: restricted the use of recreational crab traps in Fishing Zones 3
17 and 4

18 19 **II. Rulemaking Steps Undertaken Between May and November 2021**

20 **A. Exhibit A, Section III(a)(iii)**

21 CDFW completed a second year of the Trap Gear Retrieval Program to allow permitted
22 entities to retrieve lost or abandoned commercial Dungeness crab trap gear after the close of the
23 season. Seven permits were issued for 2021. Additional data on numbers of traps retrieved are
24 still being processed.

25 **III. Other Steps Undertaken Between May and November, 2021**

26 **A. Exhibit A, Section III(a)(1)**

27 As noted in earlier reports, CDFW submitted its draft Conservation Plan to NMFS on
28 May 15, 2020. CDFW continued work on the draft Conservation Plan with plans to submit a

1 final Incidental Take Permit (ITP) application to NMFS in Spring, 2022. CDFW anticipates
2 releasing the draft Conservation Plan in advance of submittal to NMFS for an initial public
3 comment period. The 45-day public review and comment period will start mid-November 2021.

4 **B. Exhibit A, Section III(a)(v)**

5 All CDFW risk assessments noted above were conducted in coordination with the
6 Working Group. CDFW continued to support Working Group meetings, transitioning the
7 Working Group to fully remote meetings. All materials and outcomes from the Working Group
8 risk assessment meetings are available on CDFW's Whale Safe Fisheries website
9 (<https://wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries>) and noticed through the
10 Whale Safe Fisheries listserv.

11 CDFW also held virtual port meetings on October 22, 2021 to discuss the draft
12 Conservation Plan and RAMP regulations, and will also hold a public meeting on the draft
13 Conservation Plan in December of 2021.

14 CDFW also facilitated an annual meeting of the Working Group, which included
15 discussion of the work plan and updating the Charter. Items on the work plan for the coming year
16 include continued work on gear innovations. Charter revisions were made to reflect RAMP
17 implementation and process updates.

18 **C. Exhibit A, Section III(d)(iii)**

19 A new requirement under the RAMP regulations requiring bi-weekly reporting of fishing
20 activity and location has been used to inform risk assessments for the May 18, 2021 risk
21 assessment, and will continue to be used going forward in the 2021-22 season.

22 CDFW also supported Ocean Protection Council-funded gear innovation testing being
23 managed by the National Marine Sanctuary Foundation (NMSF), including supporting a multi-
24 day demonstration on July 27 and 28, 2021 with NMSF and CDFW staff.

25 **D. Exhibit A, Section III(e)**

26 CDFW has continued to explore alternative gear testing (including pop-up gear) and has
27 developed testing guidance and identified partners/funding for operations. The primary partners
28

1 are the NMSF and Ocean Protection Council (OPC).

2 Pursuant to the recently adopted regulation formalizing the Risk Assessment and
3 Mitigation Program (RAMP; required under the settlement agreement), CDFW has evaluated two
4 proposals to authorize gear, and had follow-up calls with one applicant to address missing
5 elements of the application. The second application was withdrawn.

6 Staff presented on CDFW's efforts to support alternative gear development at the 2021
7 Ropeless Consortium on October 19, 2021.

8 **IV. No Objection to Filing Joint Status Report**

9 The Center, PCFFA and IFR do not have direct knowledge of all of the actions outlined
10 above, but have read this report and do not object to it being filed as a Joint Status Report.

11 Dated: November 16, 2021

Respectfully submitted,

12 /s/ Gary Alexander

Gary Alexander

13 Deputy Attorney General

OFFICE OF THE ATTORNEY

14 GENERAL

15 *Attorney for Defendant Charlton*

16 *H. Bonham*

17 /s/ Catherine Kilduff

Catherine Kilduff

18 Kristen Monsell

19 *Attorneys for Plaintiff*

20 *Center for Biological Diversity*

21 /s/ Glen Spain

22 Glen Spain

23 *Attorney for Intervenors Pacific*
Coast

24 *Federation of Fishermen's*
Association and

25 *Institute for Fisheries Resources*

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ATTESTATION

I, Gary Alexander, am the ECF user whose identification and password are being used to file this Joint Status Report. In compliance with L.R. 5-1(i), I attest that the other signatories have concurred in this filing.

DATED: November 16, 2021

/s/ Gary Alexander

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CERTIFICATE OF SERVICE

Case Name: *Center for Biological Diversity v. Charlton H. Bonham* Case No. **3:17-cv-05685-MMC**

I hereby certify that on November 16, 2021, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system:

SIXTH POST-STAY JOINT STATUS REPORT

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 16, 2021, at San Francisco, California.

<u>G. Guardado</u> Declarant	<u>/s/ G. Guardado</u> Signature
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